

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6150

United States Court of Appeals
FOR THE SECOND CIRCUIT

Matter of the Accounting of

ABRAHAM D. LEVY

As Administrator

of

the Estate of Charles Brown a/k/a Charles W. Brown, Dec.

STATE OF NEW YORK,

Appellant-Respondent,

UNITED STATES OF AMERICA,

Appellee-Petitioner.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State of New York,
Appellant-Respondent
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PAGINATION AS IN ORIGINAL COPY

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Docket Entries.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

74 Civ. 2229

TITLE OF CASE

In the Matter of the Accounting of Abraham D. Levy.
As Administrator of the Estate of Charles Brown, deceased.

ATTORNEYS

For plaintiff:

United States Attorney.

Paul J. Curran.

U.S.D.C., S.D.N.Y., Foley Square, N.Y.C. 1000.

For defendant:

STATISTICAL RECORD

J.S. 5 mailed ×

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NAME OR RECEIPT NO.

USA.

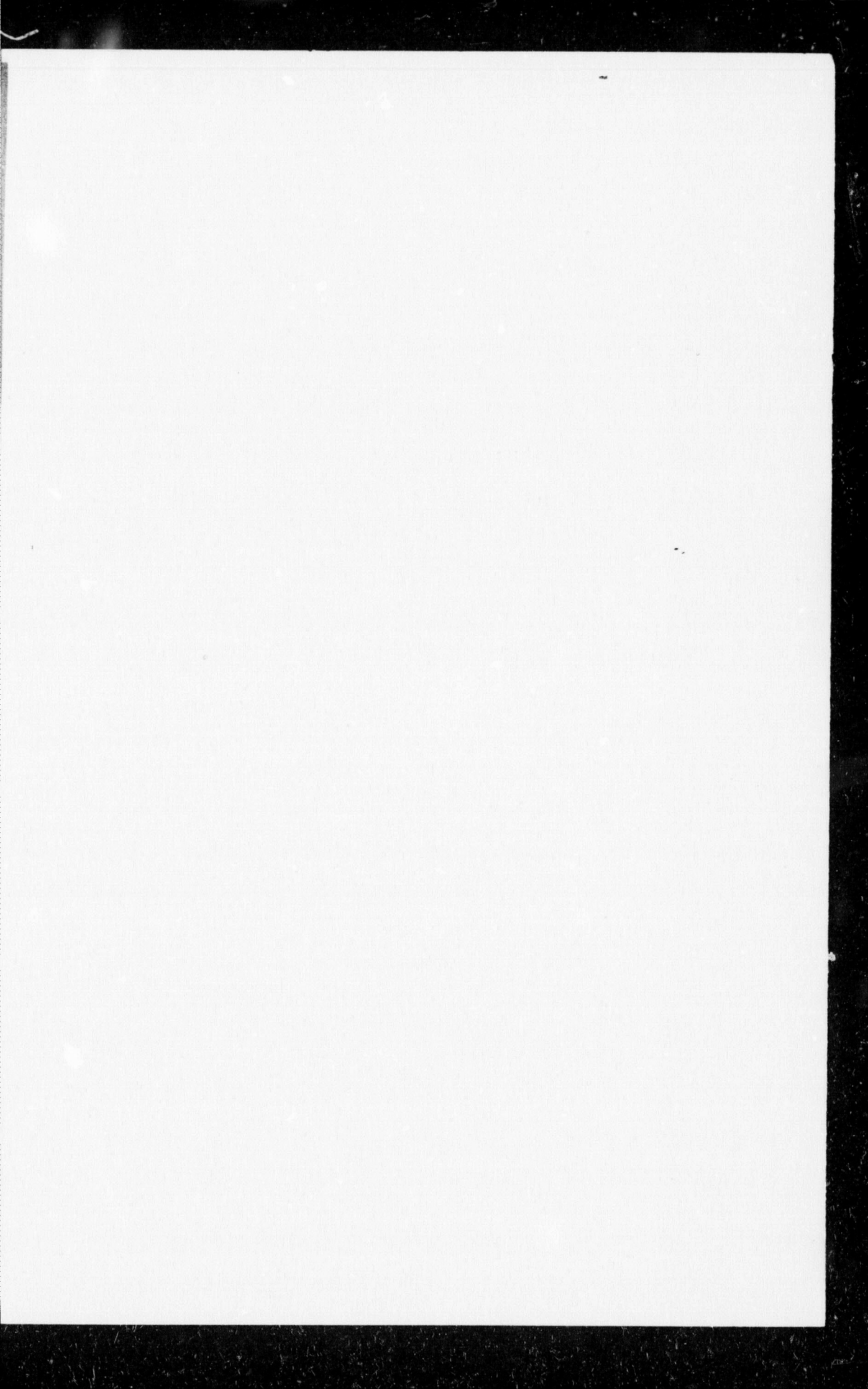
IN THE MATTER OF THE ACCOUNTING OF ABRAHAM D. LEVY
AS ADMINISTRATOR OF THE ESTATE OF CHARLES BROWN

74 Civ. 2229

DATE

PROCEEDINGS

May 22-74	Filed petition for removal from Surrogates Court Count of the Bronx, State of N.Y.
Oct. 10-74	Pre-trial conference held by Raby, U.S. Mag.



Docket Entries.

DATE	PROCEEDINGS
Jan. 15-75	Pre-trial conference held by Raby, U.S. Mag.
Apr. 14-75	Pre-trial conference held by Raby, U.S. Mag.
7- 8-75	Pre-trial conference held by Raby, U.S. Mag.
2-17-75	Filed Claimant's United States of America's Affidavit and Notice of Motion for an order summary judgment. Ret: 12-30-75.
12-17-75	Filed Claimant's Memorandum of Law in support of motion for summary judgment.
1- 6-76	Filed stip & order that the motion for summary judgment retuble 12-30-75 is adjourned to 1-26-76. So ordered—CANNELLA, J.
02-10-76	Filed stip & order adjourning the motion for summary judgment from 01-26-76 to 02-17-76. So ordered—CANNELLA, J.
02-23-76	Filed stip & order adjourning the motion for summary judgment from 02-17-76 to 03-09-76. So ordered—CANNELLA, J.
03-04-76	Filed memorandum of law on behalf of the State of New York.
03-04-76	Filed affdvt. of Irwin M. Strum on behalf of the State of New York in opposition to the application of the U.S.A. for summary judgment.
04-09-76	Filed stip. & order that the time for claimant to submit reply papers in support of motion for summary judgment. is extended to 4-30-76.
04-29-76	Filed Ultimate Charitable Beneficiaries (State of N.Y.) supplemental affdvt. of Irwin M. Strum of the position of the State of N.Y.
05-06-76	Filed stip & order that based upon an affdvt. of Dr. H. Ruchelman, associated with V.A.,

Docket Entries.

DATE	PROCEEDINGS
	which the U.S. will file with this court, the facts as indicated shall be true for all purposes and that the Attorney General of the State of N.Y. may serve, etc. a supplemental affdvt. challenging the constitutionality as indicated. So ordered—CANNELLA, J.
05-21-76	Filed Claimant, United States of America's Reply Memorandum.
05-24-76	Filed affdvt. of Dr. H. Ruchelman, employed by the U.S. Government as a physician with the Veterans Administration dated, 5-24-76.
05-17-77	Filed supplemental affdvt. of Allan E. Kirstein, Assistant Attorney General of the State of N.Y.
07-22-77	Filed Opinion #46198—for the reasons stated, the Court that portion of the decedent's estate which vests in the U.S., etc. is not subject to New York estate taxation. The U.S. is directed to submit a judgment on notice with five days. So ordered—CANNELLA, J. (m/n)
08-08-77	Filed Judgment—that that portion of the Estate of Charles Brown which vests in the U.S. of America is not subject to N.Y. State estate taxation and that this matter be remanded to the Surrogate's Court, County of Bronx, State of N.Y. for further proceedings consistent with the opinion and judgment of this Court. CANNELLA, J. Judgment entered 8-8-77. Clerk. (m/n)
08-08-77	Mailed certified copy of Judgment to Surrogate's Court, County of Bronx, State of N.Y., 851 Grand Concourse, Bronx, N.Y. 10451.
09-06-77	Filed notice of appeal to the USCA from the order of J. Cannella dated 8-8-77. m/n

Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2229 (JMC)

IN THE MATTER OF THE ACCOUNTING
OF ABRAHAM D. LEVY as
Administrator of the Estate of
CHARLES BROWN, Deceased.

This matter having been removed to this Court from the Surrogate's Court, County of Bronx, State of New York, on the petition of claimant, the United States of America, and said claimant having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the parties having filed memoranda of law and affidavits in support of, or in opposition to, said motion, and the Court having rendered its decision in a written opinion dated July 20, 1977,

Now, it is ordered, adjudged and decreed as follows:

1. That that portion of the Estate of Charles Brown which vests in the United States of America pursuant to 38 U.S.C. § 5220 is not subject to New York State estate taxation.
2. That this matter be remanded to the Surrogate's Court, County of Bronx, State of New York for further

Judgment.

proceedings consistent with the opinion and judgment of
this Court.

Dated: New York, New York
August 2, 1977

JOHN M. CANNELLA
John M. Cannella
United States District Judge

JUDGMENT ENTERED—8-8-77
RAYMOND F. BURGHARDT
Clerk

Notary Public, State of New York
No. 31-4632381
Qualified in New York County
Commission Expires March 30, 1978

Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 2229 (JMC)

In the Matter of the Accounting of
ABRAHAM D. LEVY,
as Administrator of the Estate of Charles Brown, Deceased.

SIRS:

NOTICE is hereby given that the State of New York, a respondent in the above matter, hereby appeals to the Second Circuit pursuant to Federal Rules of Appellate Procedure, Rule 3, from the opinion and order entered in this proceeding by the Hon. John M. Cannella of the United States District Court for the Southern District of New York dated the 20th day of July, 1977 and entered on or about August 8, 1977.

Dated: New York, New York
August 31, 1977

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent-Appellant

By Allan E. Kirstein
ALLAN E. KIRSTEIN, Assistant Attorney Genl.
Two World Trade Center
New York, New York 10047
Tel. (212) 488-7487

7a

Notice of Appeal.

To: HON. ROBERT B. PISKE, JR.
United States Attorney's Office
Southern District of New York
One Saint Andrews Plaza
New York, New York 10007
Attorney for Petitioner-Appellee

ABRAHAM D. LEVY
Public Administrator
851 Grand Concourse
Bronx, N.Y. 10451

8a

**Letter from Office of the Public Administrator to Irving
Atkins, Senior Attorney, State Tax Commission.**

OFFICE OF THE PUBLIC ADMINISTRATOR

BRONX COUNTY

851 GRAND CONCOURSE

NEW YORK, N. Y. 10451

CYPRESS 3-7660

(SEAL)

ABRAHAM D. LEVY
PUBLIC ADMINISTRATOR
SIDNEY ROSEN
DEPUTY

IN YOUR REPLY, PLEASE REFER TO
FILE NO. 9620
ESTATE OF CHARLES BROWN

October 13, 1977

Irving Aitkens, Esq.,
Assistant Attorney General [sic]
State of New York
2 World Trade Center
New York, New York 10047

Dear Mr. Aitkens:

Pursuant to your telephone conversation and request, please be advised that a careful examination of the personal effects of the decedent and all assets collected by the Public Administrator belonging to the decedent, Charles Brown, fail to show any payments ever received by Mr. Brown from the Veterans Administration.

This case originally came to our office after the decedent died in the Veterans Administration, Bronx, New York. The Veterans Administration made formal claim to all of

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*Letter from Office of the Public Administrator to Irving
Atkins, Senior Attorney, State Tax Commission.*

the property belonging to Mr. Brown based upon his death in the Veterans Hospital. There was never a claim that any of the assets of the decedent were traceable to Veteran Administration benefits.

I trust that is satisfactory to you.

Very truly yours,

MICHAEL M. LIPPMAN
MICHAEL M. LIPPMAN,
Co-Counsel

MML:eh

Veterans Administration Solicitor's Opinion**84-193****February 5, 1946****APPENDIX****SYLLABUS: ESCHEAT.**

DISTRIBUTION BY COURT BEFORE INVESTIGATION OF EXISTENCE OF HEIRS OF VETERAN COMPLETED—EFFECT WHERE HEIRS ARE ESTABLISHED AFTER FUNDS ARE PAID TO V. A. BY GUARDIAN—APPOINTMENT OF ADMINISTRATOR AND RETURN OF FUNDS BY V. A.—PROCEDURE AND AUTHORITY FOR—SECTION 21(3), WORLD WAR VETERANS ACT, AS AMENDED.

FACTS: Veteran under guardianship died leaving \$637.24 derived from V. A. in guardian's hands. Upon final accounting filed by guardian and representation to the Court that veteran died without heirs, court ordered guardian to return balance to United States after payment of expenses, pursuant to Section 21(3), World War Veterans Act, as amended (38 U.S.C.A. Section 450). Guardian returned \$541.44 which was deposited to current appropriations in accordance with the provisions of Section 21(3), *supra*. Subsequent report of investigation indicates veteran was survived by a sister and probably by children of deceased brothers and sisters.

HELD: If veteran is survived by heirs court order directing return of funds to United States was based on mistake of fact and there was no factual basis for escheat under Section 21(3). Under such circumstances funds were deposited in appropriation upon an erroneous premise and may be withdrawn therefrom. Upon determination that veteran was survived by heirs, they should be informed that an Administrator should be appointed to receive payment to be administered and distributed as provided by law. Funds should not be released to heirs or next of kin in absence of determination of heirship by court.

*Veterans Administration Solicitor's Opinion 84-193,
February 5, 1946.*

Memorandum from the Solicitor to Assistant Administrator
for Finance.

Re: TROWBRIDGE, Sylvester B. XC-887-179.

Reference is made to your memorandum, dated January 18, 1946, attached to the claims folder of the above entitled case.

The veteran died in Los Angeles, California, on May 25, 1944, while under the guardianship of George L. Young, appointed by the Superior Court of Los Angeles County, California, on January 29, 1941, leaving a balance of \$637.24 in the guardian's hands. The guardian filed his final account with the court and upon representation to the court that the veteran died without heirs capable of inheriting his estate, an order was entered by the court, under date of September 27, 1944, directing the guardian to return the balance of assets remaining in the guardianship estate, after payment of authorized expenses incident to the closing of the guardianship, to the United States, pursuant to the provisions of Section 21(3), World War Veterans Act, as amended (38 U. S. C. A., Section 450). Pursuant to this court order the guardian forwarded to the V. A. his check payable to the Treasurer of the United States in the amount of \$541.44, representing such balance of assets, which amount was deposited to the current appropriation in accordance with the provisions of Section 21(3), *supra*. While no definite proof of relationship has been submitted, it is now indicated, as a result of investigation by the V. A. that the deceased veteran was in fact survived by Mrs. Margaret Ann Johnson Wehrli, Fairbury, Nebraska, who alleges she is his sister, and probably by children of deceased brothers and sisters.

Your request advice as to whether:

1. Funds returned by a guardian under the conditions as related, and deposited to the current appropriation

*Veterans Administration Solicitor's Opinion 84-193,
February 5, 1946.*

under the provisions of Section 21(3), may be paid by the V. A. to the heirs or next of kin of the deceased veteran, upon proof of heirship.

2. If the answer to the above is in the affirmative, will payments be based on a claim submitted on Standard Form 1055 and disposed of in the same manner as are personal funds of patients?

The file indicates the order of the court authorizing return of the funds to the V. A. was based upon information that no heirs survived the veteran. Evidence submitted strongly suggests that one or more heirs did survive him and are living at this time. If he is survived by heirs the action of the court in directing return of the funds to the V. A. was based upon a mistake of fact. This being true, there was no factual basis for the escheat of the estate to the United States under Section 21(3) of the World War Veterans Act. Under such circumstances the funds were deposited in the appropriation of the V. A. upon an erroneous premise, and may be withdrawn therefrom. Upon your determination that the veteran was survived by relatives entitled to inherit his estate, the amount deposited in the appropriation may, as stated, be withdrawn and released to the legal representative of the Veteran's estate to be administered and distributed as provided by law. The funds should not be released to heirs or next of kin in the absence of determination of heirship by the court. The alleged heirs should be informed that an administrator for the veteran's estate should be appointed in order that the court may pass judgment in the matter. The Chief Attorney at Los Angeles, California, will cooperate and advise with the alleged heirs as to the legal action required under the present facts.

Robert B. Fiske, Jr. (R2)

3 COPIES RECEIVED

October 26, 1977

UNITED STATES ATTORNEY